IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

MFA.No. 445 of 2001()

WCC.53/1994 of W.C.C., KOTTAYAM

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APPELLANTS/OPPOSITE PARTIES:

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1. UNNIKRISHNAN,
CHEERAKKATTU ILLUM,
KUMARANELLOOR.P.O., KOTTAYAM DISTRICT.

2. SHANKAR,
CHEERAKKATTU ILLUM,
KUMARANELLOOR.P.O.,
KOTTAYAM DISTRICT.

3. VASAN,
CHEERAKKATTU ILLUM,
KUMARANELLOOR.P.O.,
KOTTAYAM DISTRICT.

4. ANIL,
CHEERAKKATTU ILLUM,
KUMARANELLOOR.P.O.,
KOTTAYAM DISTRICT.

5. ASHA KALIDASA BHATTATHIRI,
KUZHIKKATTU ILLUM,
THALASHERRY BHAGAM,
THIRUVALLA.

6. ARYADEVI,
W/O.LATE C.S. NARAYANAN
NAMBOOTHIRI, KUMARANELLOOR.P.O.,
KOTTAYAM.

BY ADV. SRI.T.P.VARGHESE
SRI.PHILIP T.VARGHESE

RESPONDENT/APPLICANT:

C.T.RAJAN,
CHITTAKKATTU HOUSE,
AYMANAM.P.O.,
KOTTAYAM.

BY ADV. SRI.P.RAVINDRA BABU
SRI.SURIN GEORGE IPE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.3853/2001 IN M.F.A. NO.445/2001

DISMISSED.

SD/-
J.B.KOSHY, JUDGE

SD/-
19.7.07. K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

JP

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.445 OF 2001

Dated 19th July, 2007

JUDGMENT

Koshy,J.

Respondent in this case met with an accident and lost his right eye. He claimed a compensation of Rs.1,00,000/= claiming that his monthly income was Rs.2,000/=. He was aged 30 at the time of accident. According to him, he was working as a Cutter in a saw mill. Licencee's legal representatives are the appellants herein who were the opposite parties before the Commissioner for Workmen's Compensation. On 11.5.1993 at 4 p.m. while the applicant was engaged in his work, a piece of stone hit on his right eye. Immediately he was taken to the Medical College Hospital, Kottayam by his co-worker. He lost vision of his right eye. Apart from the oral evidence of himself, two co-workers were examined. They deposed that the accident occurred at 4 p.m. as alleged. According to the appellants, the applicant was employed as a temporary worker in their saw mill only up to 17.7.1989, thereafter he was not employed and there was no work on 11.5.1993. For that, they produced the attendance register. But, the employer submitted that he visited the patient and his doctor on the same day evening. Since it is a small establishment, the Commissioner did not give importance

to the attendance register, but, believed the version of the applicant and co-workers that the accident occurred as contended in the claim petition. It is a finding of fact based on evidence. In any event, it cannot be stated as a substantial question of law so as to maintain an appeal under Section 30 of the Workmen's Compensation Act. Then the question is whether the calculation of compensation was correct. Even though, according to the applicant, his average monthly wages was Rs.2,000/= during the relevant time, maximum wages that can be taken into account for calculation of compensation was only Rs.1,000/=. Tribunal has taken Rs.1,000/= as monthly income for calculation of compensation. Ext.A3 certificate issued by the Medical College Hospital, Kottayam shows that there was only perception of light in the right eye. There is penetrating injury on the retina. That shows that his right eye sight was almost lost except to perception of light. In the disability certificate it is stated that his visual disability is 30%. It appears that doctor's certificate was based on the schedule to the Workmen's Compensation Act itself. Schedule I Part I item No.4 shows that if the vision is 100% lost, there is 100% loss of earning capacity. For loss of one eye, without complication, the other being normal, percentage of loss of earning capacity

fixed is 40%, for loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal, it is fixed as 30% and loss of partial vision of one eye, loss of earning capacity is 10%. Here, vision of one eye was lost. In the above circumstances, as per the schedule, his loss of earning capacity will be 30%. Therefore, we are of the view that it cannot be stated that Tribunal went wrong in assessing compensation for 30% disability. Only 6% simple interest was awarded for the amount and total compensation awarded was only Rs.30,893/=. We see no ground to interfere with the impugned order.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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